

SERVICE DATE – APRIL 13, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35592

RAILAMERICA, INC., PALM BEACH HOLDING, INC.,
RAILAMERICA TRANSPORTATION CORP., RAILTEX, INC., FORTRESS
INVESTMENT GROUP, LLC, AND RR ACQUISITION HOLDING, LLC—
CONTROL EXEMPTION—MARQUETTE RAIL, LLC

Digest:¹ This decision allows RailAmerica, Inc., Palm Beach Holding, Inc., RailAmerica Transportation Corp., RailTex, Inc., Fortress Investment Group, LLC, and RR Acquisition Holding, LLC to acquire control of Marquette Rail, LLC.

Decided: April 12, 2012

On February 3, 2012, RailAmerica, Inc. (RailAmerica), Palm Beach Holding, Inc. (Palm Beach), RailAmerica Transportation Corp. (RTC), RailTex, Inc., Fortress Investment Group, LLC (Fortress), and RR Acquisition Holding, LLC (RR Acquisition) (collectively, Petitioners), filed a petition for exemption pursuant to 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. §§ 11323-25 to acquire control of Marquette Rail, LLC (Marquette Rail), a Class III rail carrier.² On February 28, 2012, the Board served a notice of the petition and published the notice in the Federal Register (77 Fed. Reg. 12,107). Comments were due by March 19, 2012, and replies, if any, were due by March 26, 2012. No comments were filed in response to the notice. We will grant the exemption subject to labor protective conditions.

BACKGROUND

According to Petitioners, RTC entered a Purchase and Sale Agreement dated January 30, 2012 (the Agreement), with Marquette Rail, Marquette Rail Corp., Farmrail System, Inc., Transportation Solutions, Inc., RC Rail Investments, LLC, Progressive Rail, Inc., JG-MQT-RR

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² On February 2, 2012, Petitioners sought a protective order regarding confidential and commercially sensitive materials they would be submitting in this proceeding. That request was granted by decision served on February 14, 2012.

Holdings, LLC, and Richard W. Jany (collectively, the Sellers). Under the Agreement, RTC will acquire control of Marquette Rail from the Sellers.

Fortress's noncarrier affiliate, RR Acquisition, currently owns about 60% of the publicly traded shares and controls the noncarrier RailAmerica, which directly controls the noncarrier Palm Beach, which directly controls the noncarrier RTC. RailAmerica controls 34 Class III rail carriers.³ Further, Fortress, on behalf of other equity funds managed by it and its affiliates, directly controls the noncarrier FECR Rail LLC, which directly controls FEC Rail Corporation, which directly controls Florida East Coast Railway, LLC (FEC), a Class II rail carrier.

As relevant here, Mid-Michigan Railroad, Inc. (MMRR), which is controlled by RailAmerica, operates between milepost 137.8 at Lowell, Mich., and milepost 159.5 at Walker, Mich., and is crossed by CSX Transportation, Inc. (CSXT) at MMRR milepost 2.9. Marquette Rail's line (the Line)⁴ physically ends north of the MMRR line at Turner Avenue, NW. Thus, to facilitate interchange with CSXT south of that point at Wyoming Yard, Marquette Rail uses CSXT's track that crosses the MMRR line to reach Wyoming Yard, the point of interchange for cars received from and delivered to Marquette Rail. According to the petition, the only way for Marquette Rail to reach Wyoming Yard is by operating over the CSXT line. Petitioners further state that the diamond over the MMRR track is used by Marquette Rail solely for the purpose of interchanging traffic with CSXT at Wyoming Yard and that Marquette Rail has no other rights to use the crossing track.

According to Petitioners, Marquette Rail will benefit from Petitioners' financial resources and lengthy experience in successfully managing short line railroads. Petitioners request expedited handling of their petition for exemption to allow them to make capital improvements to the Line and to the locomotive fleet in order to improve cycle time for shippers. Petitioners add that expedited handling is warranted in order to allow Petitioners to take advantage of the short construction season in Michigan.⁵

³ For a list of the railroads controlled by RailAmerica, see the petition for exemption at pages 6-7. In addition, subsequent to the filing of the petition in this case, Petitioners filed a notice of exemption to acquire control of the Wellsboro & Corning Railroad, LLC, a Class III carrier, in Docket No. FD 35605. The proposed transaction in that proceeding is scheduled to be consummated on or after April 7, 2012 (30 days after the notice of exemption was filed).

⁴ The Board previously granted Marquette Rail an exemption to lease the Line from CSXT in Marquette Rail, LLC—Lease and Operation Exemption—CSX Transportation, Inc., FD 34728 (STB served Oct. 26, 2005). The Line, which totals approximately 129.03 miles, extends between: (a) milepost CGE 3.6 at the Grand Rapids, Mich. station and milepost CGE 73.71 at the Baldwin, Mich. station; (b) milepost CB 106.91 at the Baldwin station and milepost CB 136.5 at the Ludington, Mich. station; (c) milepost CBA 87.0 at the Walhalla, Mich. station and milepost CBA 113.7 at the Manistee, Mich. station; and (d) milepost CBA 113.7 at the Manistee station and the end of track at Filer City, Mich. (the Filer City Spur, approximately 2.63 miles in length).

⁵ Pet. at 10; Petitioners' Letter dated Mar. 20, 2012.

DISCUSSION AND CONCLUSIONS

The acquisition of control of a rail carrier by a person that is not a rail carrier, but that controls any number of rail carriers, requires the approval of the Board. 49 U.S.C. § 11323(a)(5). Under 49 U.S.C. § 10502(a), however, we must exempt a transaction or service from regulation if we find that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101, and (2) either the transaction or service is limited in scope, or regulation is not needed to protect shippers from the abuse of market power.

In this case, an exemption from the prior approval requirements of 49 U.S.C. §§ 11323-25 is consistent with the standards of 49 U.S.C. § 10502. Detailed scrutiny of the proposed transaction through an application for review and approval under 49 U.S.C. § 11323-25 is not necessary here to carry out the rail transportation policy. The proposed transaction will result in a change in ownership of Marquette Rail with no apparent lessening of competition and will bring Marquette Rail under the experienced management of Petitioners' family of short line rail carriers with access to capital for improving service to shippers on the Line. Thus, an exemption will promote the rail transportation policy by minimizing the need for federal regulatory control over the proposed transaction, 49 U.S.C. § 10101(2); ensuring the development and continuation of a sound rail transportation system that will continue to meet the needs of the shipping public, 49 U.S.C. § 10101 (4); fostering sound economic conditions in transportation, 49 U.S.C. § 10101(5); and encouraging efficient management, 49 U.S.C. § 10101(9). Other aspects of the rail transportation policy will not be adversely affected.

Nor is detailed scrutiny of the proposed transaction necessary to protect shippers from an abuse of market power. Although Marquette Rail crosses the MMRR using CSXT track in order to interchange with CSXT, the record establishes that it is only for this limited purpose that Marquette Rail can do so and there is no evidence on the record of any adverse impacts on rail operations or lessening of rail competition resulting from these crossing rights. This conclusion is supported by the fact that no shipper or other interested entity has objected to this acquisition of control. To the contrary, shippers will likely experience more efficient service as a result of the transaction, as they will benefit from Petitioners' substantial experience and resources.⁶

Under 49 U.S.C. § 10502(g), we may not use our exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the transaction involves one Class II (FEC) and one or more Class III rail carriers, our grant will be made subject to the labor protective requirements of 49 U.S.C. § 11326(b) and Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad, 2 S.T.B. 218 (1997), aff'd in relevant part sub nom. Association of American Railroads v. STB, 162 F.3d 101 (D.C. Cir. 1998).

⁶ Given our finding that regulation is not needed to protect shippers from the abuse of market power, we need not determine whether the transaction is limited in scope. See 49 U.S.C. § 10502(a).

This transaction is exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c)(2)(i) because it will not result in any significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 C.F.R. § 1105.8(b)(3) because it will not substantially change the level of maintenance of railroad properties.

As indicated, Petitioners have requested expedited action on their petition for exemption to allow them to begin making capital improvements to the Line and the locomotive fleet in order to improve service to shippers. Normally, our decision granting an exemption petition becomes effective 30 days after the decision is served. In reviewing the record here, however, we conclude that Petitioners' request for expedited action is reasonable and, accordingly, the exemption will be made effective April 28, 2012.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. § 10502, we exempt from the prior approval requirements of 49 U.S.C. §§ 11323-25 Petitioners' acquisition of control of Marquette Rail, subject to the labor protective conditions at 49 U.S.C. § 11326(b) and Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad, 2 S.T.B. 218 (1997).

2. This exemption will be effective on April 28, 2012. Petitions for stay must be filed by April 20, 2012. Petitions to reopen must be filed by April 23, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.